

Kristin M. Collins  
kcollins@preti.com  
207.791.3292

March 7, 2022

## VIA HAND-DELIVERY

Town of Rockport  
Zoning Board of Appeals  
101 Main Street  
Rockport, ME 04856

**RE: Appeal of Building Permit; 20 Central Street, LLC**

Dear ZBA members:

Please accept this appeal pursuant to Section 702 of the Land Use Ordinance on behalf of the following Rockport residents and property owners:

David Barry – 1 Mechanic Street (Map 29, Lot 271)  
David Kantor and Michael Hampton – 32 Main Street (Map 35, Lot 129-2)  
John Priestley – 71 Main Street, Map 30, Lot 35 (home); 23 Central Street, Map 30, Lot 131-3 (business)  
Mark Schwarzmann – 33 Mechanic Street (Map 22, Lot 99)  
Winston Whitney – 30 Main Street (Map 20, Lot 129-1)  
Friends of Rockport

These appellants appeal the Planning Board's findings related to the Rockport Harbor Hotel on remand from the Superior Court. A copy of those findings is attached as Exhibit A. A check for \$400, representing the filing fee for this appeal, is enclosed.

## I. STANDING

The Appellants are or represent Rockport property owners and taxpayers who own property within 1,000 feet of the hotel proposed by 20 Central Street LLC ("the hotel") and, for the reasons outlined below, stand to suffer impacts from the hotel that are distinctive from and more severe than will be suffered by the general public.

- John Priestley owns business property diagonally across the street from 20 Central Street, and has a direct view of the property. Mr. Priestley's business property is benefitted by private parking spaces serving the building, which are frequently used by the public when public parking is unavailable to serve nearby businesses and event spaces. He will be directly impacted by the incongruous architectural appearance of the hotel, and by the lights and sounds coming from the hotel.
- The remaining individual Appellants each own property in close proximity to and/or view of the hotel.

March 7, 2022

Page 2

- Friends of Rockport is a nonprofit association with membership that includes many residents of Rockport Village.

These appellants each travel through Rockport Village daily both by foot and by vehicle and therefore stand to be directly impacted by the increased traffic and parking problems described in this appeal. They will also suffer light pollution and noise pollution as well as shortage of the public parking they have relied upon for themselves and their guests, as well as degradation of their property values.

These Plaintiffs engaged through counsel with the Planning Board in its review on remand from the Superior Court.

## II. RECORD

This appeal will be resolved on an appellate basis and the appellants reserve the right to reference all material referenced by the Planning Board in rendering its decision.

## III. BASIS FOR APPEAL

The basis for this appeal is as outlined in the attached Rockport Board of Appeals form.

Thank you for your consideration. We look forward to being heard on this appeal.

Sincerely



Kristin M. Collins

Enclosures:  
Exhibits  
Appeal form  
Filing fee of \$400

Please print – **ZONING BOARD OF APPEALS APPLICATION** – Please printName Applicant(s)/Appellant(s) Friends of Rockport; John PriestleyStreet Address(s) See attached. Map \_\_\_\_\_ Lot \_\_\_\_\_Appellant Mailing Address see below

Appellant Email Address \_\_\_\_\_

Appellant Tel # \_\_\_\_\_ Cell# \_\_\_\_\_ Fax# \_\_\_\_\_

Name of Appellants Agent/Legal Rep. Kristin M. Collins, Esq., Preti FlahertyAgent's Mailing Address 45 Memorial Circle, Augusta, ME 04330Agent's Tel # 207-791-3292 Fax \_\_\_\_\_ Email kcollins@preti.com

Agent's Email Address \_\_\_\_\_


**INFORMATION ON ACTION OR APPROVAL BEING APPEALED OR APPLIED FOR**Name of Project Rockport Harbor Hotel, Planning Board findings on remand from Superior Court.Street Address 20 Central Street Map: 29 Lot: 293Name of Owner 20 Central Street LLCOwner's Mailing Address P.O. Box 812, Camden, ME 04843Owner's Email Address c/o Mark Coursey, Esq., Mark@camdenlaw.comOwner's Tel. # 207-236-9206 Fax \_\_\_\_\_ Email \_\_\_\_\_**TYPE OF APPEAL REQUIRING REVIEW**

(please check off and complete appropriate attached sheet for specific type of appeal)

- ☒ Administrative appeals of the order or decision of the Planning Board or Code Enforcement Officer
- ☐ Special Exceptions authorized by the Ordinance.
- ☐ Variances authorized by the Ordinance.
- ☐ Shoreland Zoning determination

**IMPORTANT INFORMATION FOR APPELLANTS AND APPLICANTS****The ZBA's regular meeting date is the second Wednesday of every month.**

1. Please provide twelve (12) copies of a complete appeal application and supporting documentation.
2. Please enclose a check for Board of Appeals hearing fee; (Fee Schedule)
3. Complete applications must be submitted to the Planning Office 15 days before a regularly scheduled meeting.
4. The Planning Office will confirm a meeting date only upon receipt of a complete application, supporting documentation & fee.
5. Applications that are not complete will be returned to the appellant by the Planning Office for additional information.

**To the best of my knowledge, all information submitted with this application is true and correct.**Signature of Appellant/Applicant  Date Received by Planning Office \_\_\_\_\_



**ADMINISTRATIVE APPEALS: To appeal any order, decision, approval or determination of the Code Enforcement Officer or Planning Board.**

Appeals from Planning Board decisions made under 'Site Plan Review' may be filed by a person aggrieved by that decision. An appeal from the final decision of the Planning Board shall not be a *de nova* proceeding but shall be reviewed by the Zoning Board of Appeals or ZBA based on the record created by the Planning Board. The Zoning Board of Appeals or ZBA shall base its decision on whether the Planning Board decision was within the scope of Planning Board authority and supported by substantial evidence in the record.

Note to Appellant: Please provide a detailed description, including supporting documentation and exhibits to support your position that the Code Enforcement Officer or Planning Board erred on the decision, approval or determination in question. *(please use additional space and documentation to support your appeal)*

1. The Planning Board should not have held a site visit and should not have received or considered new evidence related to scenic views or architectural harmony.
2. The Planning Board erred in determining that the 2012 approval for Union Hall did not rely upon the 25 spaces being added to Sandy's Way by the developer, to serve that proposed use. See Leucadia application and minutes of June, July and August, 2012 Planning Board meetings included in Planning Board record.
3. The Planning Board erred in failing to apply the shared parking standards applicable to the hotel and to consider the competing demands on the Sandy's Way lot, as required by the Land Use Ordinance and the Superior Court's order.
4. The Planning Board was required by the Court's order and by the Land Use Ordinance to review a parking and traffic study in conjunction with its consideration of parking on remand by the Superior Court, and its conclusion that the parking requirements are met, without considering the parking and traffic study, is not valid.
5. The applicant is prohibited from building the 26-room hotel approved by the Planning Board, and any further consideration of this project, even on remand, required site plan amendment showing the reduction of the number of rooms from 26 to 20.
6. The Planning Board erred in failing to consider the architectural harmony of the back (harbor) side of the hotel.
7. The Planning Board erred in considering a fire escape and residential decks as being architecturally similar to balconies included in the hotel design. It is the number, size, location, design, use and lighting of the balconies that make them dissimilar to any other decks or balconies in the visible surroundings of the hotel. Other balconies built after the hotel's approval should not have been considered.
8. The Planning Board must revisit its findings on scenic view, which is one of the considerations required by the architectural harmony standards of the Land Use Ordinance. The required reduction in room number changes the analysis of whether the building design minimizes the impact on scenic views to the extent reasonably practical.



**SPECIAL EXCEPTIONS:** A Special Exception is a use that may be permitted in a zoning district provided an applicant presents satisfactory evidence to the Zoning Board of Appeals that the proposed use meets the applicable criteria of Section 703 of the Rockport Land Use Ordinance.

**Notes to Applicant:** The Zoning Board of Appeals may vote to grant special exceptions with conditions and safeguards as are appropriate under the Rockport Land Use Ordinance. In order for the Zoning Board of Appeals to adequately review your application for a Special Exception please provide the following information

**A. Memo addressing the 'special exception' criteria:** The applicant should address a memo to the Zoning Board of Appeals listing the criteria and describing how the proposed use or project meets those criteria.

**B. Supporting Documentation:** The applicant should provide information, documentation and illustrations to support the position that the proposed use should be permitted.

**C. Special Exceptions requested under Section 505 - Changes in Non-Conforming Lots Structures and Uses:** If you are requesting a Special Exception under the provisions of Section 505, please provide, as part of your submissions, the following calculations in square feet, cubic feet: and, for the sq. ft., as a percentage of lot coverage 1.) size of existing lot 2.) existing improvements- sq. footage of footprints of all structures, cubic area of all structures, sq. ft. of impervious surface which would include structures, driveways and walkways 3.) proposed improvements -sq. footage of all footprints of proposed structures, cubic area of all proposed structures and sq. ft. of all proposed impervious surfaces.

**VARIANCES:** A Variance is a relaxation of the terms of the Land Use Ordinance that can be granted only where such variance will not be contrary to the public interest and only where literal enforcement of the Ordinance will result in "undue hardship". Under the Land Use Ordinance a Variance is authorized only for height, area of lot and associated density, size of structures, and/or size of yards and setbacks. A Variance from a side or rear setback requirements shall not be granted if it would interfere with firefighting operations. The amount of variance granted should only be sufficient to relieve the 'undue hardship'. Establishment or expansion of a use otherwise prohibited shall not be allowed by Variance.

**Notes to the applicant:** The Zoning Board of Appeals may grant a Variance only if all of the 'undue hardship' criteria can be met. : The term "undue hardship" means:

1. The land in question cannot yield a reasonable return unless a variance is granted;
2. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
3. The granting of the variance will not alter the essential character of the locality; and
4. The hardship is not the result of action taken by the applicant or a prior owner.

#### A. Memo Addressing

If you are requesting a setback Variance for a single family dwelling based on applicable criteria of Section 703, the dwelling must be a primary residence of the petitioner, the setback requested may not exceed 20% of the setback requirement unless the written consent of the affected abutting landowner is obtained, and the area of the dwelling may not exceed the maximum permissible lot coverage. In this context the term "undue hardship" means:

1. The need for a Variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
2. The granting of the Variance will not alter the essential character of the locality;
3. The hardship is not the result of action taken by the applicant or a prior owner.
4. The granting of the Variance will not reduce or impair the use of abutting property;
5. The granting of the Variance is based upon demonstrated need, not convenience, and that no other alternative is available.

#### B. Supporting Documentations

1. Please provide a memo addressed to the Zoning Board of Appeals explaining how the requested variance will meet each of the undue hardship criteria for the type of variance you are requesting;
2. Please provide supporting documentation and exhibits including site plans and drawings to support your position. For side or rear yard setbacks variances of less than 15 feet, a written statement from the Fire Chief concerning fire safety is required;

*Please contact the Planning Office for additional assistance.*



**Rockport Planning Board**  
**Findings of Fact and Conclusions of Law Following Remand**

Site Plan Review Application  
20 Central Street, LLC  
20 Central Street, Tax Map 029, Lot 293

These matters come before the Planning Board following remand by the Maine Superior Court in accordance with its Order and Judgment dated December 1, 2021 and its Further Order and Judgment dated January 3, 2022 (collectively, the "Superior Court's Orders"). Remand of these matters was made in the Superior Court action captioned AP-2021-02, which was addressed to an appeal of the Planning Board's Notice of Decision (the "Notice of Decision") addressed to approval of application for Site Plan Review by 20 Central Street, LLC (the "Applicant" or "20 Central"). Per the Superior Court's Orders, the Planning Board's Notice of Decision was remanded in part for reconsideration of 20 Central's site plan application with respect to the adequacy of parking and compliance with standards for architectural harmony. Specifically, with respect to off-site parking, remand was deemed necessary for the Planning Board to consider and enter findings of fact regarding the parking requirements that were previously waived for Union Hall and the extent to which the Sandy's Way lot is shared with other establishments and with the general public. Separately, the Planning Board should address whether hotel balconies conform with the architectural harmony requirements under the LUO §§ 1301 and 1003.1. The Planning Board relies upon and incorporates by reference its prior Notice of Decision and issues these findings and conclusions to document the factual and legal basis for its decision with respect to parking requirements and architectural harmony in relation to 20 Central's existing application for Site Plan Review, which the Planning Board approved as reflected in the Notice of Decision and as reflected herein.

**I. Project Description and Review Process**

On February 27, 2020, the Planning Board voted to approve 20 Central Street, LLC's application for site plan review for a 26-room hotel and restaurant ("the Project" or "the Proposed Hotel") to be located at 20 Central Street in Zoning District 913, after reviewing the application over four separate meetings. The Board voted to adopt written findings of fact and a notice of decision consistent with the Board's approval on May 21, 2020. The Planning Board's previous Notice of Decision is adopted as part of these Findings of Fact.

The Planning Board's decision was appealed to the Zoning Board of Appeals, which voted 6-0 to deny the appeal on January 22, 2021. Appellants John Priestley, David Barry, David Kantor, Mark Schwartzmann, and Winston Whitney ("the Appellants") then filed an appeal in Maine Superior Court, Knox County, on March 5, 2021.

On December 1, 2021, the Superior Court entered its first Order and Judgment remanding these matters to the Planning Board for its consideration of issues related to the adequacy of parking and



standards for architectural harmony, which was further clarified in a Further Order and Judgment issued on January 3, 2022.

On January 27, 2022, the Planning Board took a view of the Project by holding a site walk then met and heard from the parties to develop Findings of Fact and Conclusions of Law pursuant to the Superior Court's Orders. On February 3, 2022, it met and considered draft findings, then took a final vote on the remanded matters. The Applicant was represented by Tyler Smith and Attorney Andre Duchette, the Appellants were represented by Attorney Kristin Collins, and Attorneys Philip Saucier and Daniel Murphy acted as counsel to the Planning Board.

The Applicant and Appellants both submitted materials prior to the January 27, 2022, including evidentiary materials not previously in the Planning Board record. For instance, appellant John Priestly submitted a diagram of a proposed 20-Room hotel for consideration by the Planning Board. This diagram also was contained in materials used by counsel for Appellants, Kristin Collins. Appellants also submitted a traffic study for inclusion in the record prior to deliberations on remand. Similarly, 20 Central has submitted multiple statements from architects and experts, as well as materials seeking to depict the number of balconies/decks within a 500 foot radius of the Project. The Board also received new written comments from members of the public. Finally, during the Planning Board's site walk, photos were taken of the Project and its surroundings.

In an abundance of caution, the Planning Board has decided to revisit the pre-existing record without reference to any newly submitted evidence or materials provided or obtained after remand in order to make its determinations on whether substantial evidence exists to support its findings on parking requirements and architectural harmony.

Separately, the Planning Board shall issue Additional Findings and Conclusions on an alternative basis. To the extent that the Superior Court's Orders can be construed as permitting the parties and participants to submit additional evidence or materials, the Planning Board shall issue alternative findings and conclusions herein that consider such materials.

For the avoidance of doubt, the Planning Board seeks to clarify that its primary Findings and Conclusions entered on remand are based solely on the record that existed prior to remand and has not taken into consideration new evidence or materials submitted or created after remand. Additional Findings and Conclusions have been entered by the Planning Board only to the extent to which the Superior Court's Orders may be construed as allowing the submission of new evidence and materials.

## **II. Findings of Fact**

Based on the evidence in the Planning Board record that existed prior to the remand from the Superior Court, including photographs, plans, and other material presented, and not based on any additional evidence, materials, or submissions not previously in the record prior to remand, the Planning Board made the following findings:

### **A. Architectural Harmony**



1. To address concerns raised during the initial review of the Project, the Applicant made several adjustments to the façade of the proposed hotel and reduced the number of rooms from 35 to 26.
2. Based on the Applicant's application, the proposed hotel will have brick arches that complement arches and other features on the adjoining buildings.
3. Each of the three buildings on the block (the existing Shepherd and Union Hall buildings and the proposed hotel) have slightly different features, but together are visually harmonious and include similar elements such as granite foundations, historic red brick, pink mortar, dormers, decks, balconies, paneled front veneer, slate mansard roofs, divided pane windows. For example, the Shepherd Block has darker features and a storefront, while Union Hall has more of a farmhouse look with green doors – but all three buildings contain certain elements that are visually harmonious.
4. The massing and size of the buildings are proportional - the hotel will not tower over the other adjoining buildings, nor be dwarfed by them.
5. The proposed design of the hotel incorporates many of the different attributes of the neighboring buildings, and the materials are mostly native to Maine, including brick and slate.
6. While the hotel is a new, modern building, it is architecturally harmonious with the adjoining buildings – renovations and new buildings do not need to be exact replicas of adjacent buildings or of historical structures, but can be designed in a way that are from a new era and different, yet reflects elements of and a continuity with their surroundings.
7. Regarding the proposed balconies:
  - a. Balconies were always part of the design but were refined as the application went through the review process to take up less space on the façade of the building.
  - b. In reviewing the rendering of the façade, the balconies are "light weight" in appearance, and the rails and spindles are thin, blending in with the brick and the corbelling of the building. When you look at the rendering of the hotel, your eye is not drawn to the balconies, but rather the lines of the windows, doors, roof, and design elements of the structure.
  - c. There are many balconies or decks on other buildings in the Village and in the visual vicinity of both the front and rear of the hotel, including four to five balconies within eyesight of the hotel. Specifically there are balconies on various buildings looking up from Sandy's Way in the back, and Central Avenue in the front, and there is a wrought-iron balcony directly across the street from the hotel at 23 Central Street that is owned by Appellant John Priestley, which is shown in so-called "Picture 5" dated 10-7-19 from the materials submitted by Applicant in support of its Application for Site Plan Review and is part of the pre-existing record. This balcony, which is across the street from the Project, was observed on the first Site Walk of the Planning Board. In addition, there are balconies on the new public library within view, and just up the street from the Project (1 Limerock Street), and on buildings on Main Street and Franklin Streets within a couple of hundred feet from the hotel.



- d. In the rear of the building there are balconies or decks on both adjoining buildings as well as on many buildings facing the water overlooking the harbor.

## **B. Parking**

1. The Project requires 56 parking spaces under Section 803.1(2) of the Ordinance (28 spaces for the hotel and 28 spaces for the restaurant inside the hotel), a fact that is not contested by the Parties as noted by the Court's December 1, 2021 Order.
2. The Planning Board did not waive any parking requirements in relation to 20 Central's application for Site Plan Review. On January 22, 2020, the Zoning Board of Appeals granted the Applicant a waiver to allow 35 off-site parking spaces at 310 Commercial Street ("the Hoboken Lot") to be served by valet service. The record includes a lease between Hoboken School House, LLC and 20 Central Street, LLC allowing the Applicant to use the Hoboken Lot for offsite parking for the proposed hotel including a plan depicting the location of the 35 dedicated parking spaces. The Planning Board was presented and reviewed this lease, as a requirement of the Land Use Ordinance.
3. The additional 21 required parking spaces will be provided by onsite parking behind the hotel (the "Sandy's Way lot").
4. Based on the plans in the Record, there are approximately 58 parking spaces in the Sandy's Way Lot, and of those, only 28 spaces have been previously dedicated to other uses.
5. The Board reviewed the minutes from four separate Planning Board meetings, and from prior approvals beginning in 2008 (change of use for Shepherd Block, abutting the proposed hotel to the east) thru 2012 (Change of use for Union Hall from educational to commercial, abutting the proposed hotel to the west).
6. At the time of both approvals the Shepherd Block (Glen Cove, LLC) and Union Hall (Rockport Properties, LLC) were owned by two different entities. Union Hall did not have any right to use any parking spaces in the Sandy's Way Lot and Rockport Properties, LLC had no ownership or rights to use the Sandy's Way Lot. The Planning Board makes note of these facts because it has been suggested by other parties that at this time, parking spaces had been allocated or pledged to support uses by Union Hall and/or Rockport Properties, LLC, and therefore were unavailable to be allocated to 20 Central in support of its application for Site Plan Review. Based on these approvals, even if Union Hall or Rockport Properties, LLC wished to have spaces in Sandy's Way Lot allocated for use by Union Hall or Rockport Properties, LLC, the lack of any legal right (including by ownership or lease) of Union Hall or Rockport Properties, LLC to parking spaces in the Sandy's Way Lot necessarily means that no parking spaces were ever allocated or pledged from the Sandy's Way Lot for Union Hall or Rockport Properties, LLC.
7. On October 8, 2008, the Planning Board approved a change of use for Shepherd Block and allocated 28 parking spaces in the Sandy's Way Lot (Page 5 of the 10/8/2008 Minutes). In 2008, the then-existing Sandy's Way Lot did not include all of the spaces available today, but



instead ended approximately at the end of the 20 Central LLC property line, and the additional parking now behind Mary Lea Park did not exist.

8. On June 20, 2012, the Planning Board held a pre-application meeting for a change of use for Union Hall from educational to commercial. Based on page 16 of the Minutes, the owner of the property stated that there were between 50 to 60 public parking spaces available in the Village, including on both sides of Central Street, on Union Street, and on Main Street – and also noted that the Sandy's Way Lot owned by a different owner, Glen Cove, LLC, had 23-24 spaces used by others. The owner of Union Hall also noted the then-owner of Shepherd Block had plans to add additional spaces on Sandy's Way (pages 16-17 of the Minutes). The 2012 Board noted the availability of on-street parking in the Village and that the public would need to be educated that there is a lot of available parking (page 18).
9. On August 8, 2012, the Board continued its review of the Union Hall change of use application. After considering the parking, the then Board Chair Mr. Leichtman noted that "waiving the parking requirements would be the smartest thing to do" and then Board voted 5 to 0 to "waive the parking space regulations for this project." Page 3 of the 8/8/2012 Minutes.
10. Thus in reviewing the previous 2008 and 2012 minutes, the Board found that in 2008 28 spaces were allocated to Shepherd Block in the old Sandy's Way Lot, and in 2012 Union Hall parking requirements were waived. The Board determined that the 2012 waiver meant that the parking space requirements were actually waived in perpetuity, and no allocated spaces were required. Stated another way, waiver of parking requirements by the Planning Board on August 8, 2012 for uses related to Union Hall means that no spaces from the Sandy's Way Lot were allocated or legally committed by the Planning Board in relation to parking requirements related to Union Hall. This determination is supported by Union Hall's lack of any legal right (whether by lease or ownership) to the Sandy's Way Lot at the time of its requests submitted to the Planning Board discussed herein. Understood in context, "waiver" of parking requirements for Union Hall means that Union Hall and owners were legally excused from parking requirements, thereby leaving at least 28 parking spaces available and unallocated at the Sandy's Way Lot.
11. There is nothing in the record that would show that the owners of Union Hall attempted to exercise any legal right to use any spaces in Sandy's Way Lot, including any easement, lease, deed or other documentation that would show there are any dedicated rights to parking for Union Hall.
12. The additional 28 parking spaces constructed in the new portion of the Sandy's Way Lot after the 2012 approvals noted above are unallocated. The Sandy's Way Lot was not oversubscribed, and there are at least the 21 unallocated spaces requested and available in the Sandy's Way Lot for use for the Project.
13. In terms of the use of the Sandy's Way Lot by the general public or other businesses in the Village, there is nothing in the record that shows any such use nor any "shared parking." The Planning Board finds that the Sandy's Way Lot is not a shared lot under the Land Use



Ordinance definitions because this provision is invoked only when distinct parties or businesses (not under common ownership) formally propose to concurrently use a parking facility, a case that is not present here. Although it has been suggested that members of the public currently "share" the Sandy's Way Lot to patronize local businesses, the Planning Board has approved and allocated 21 parking spaces in the Sandy's Way Lot to the Applicant (which has a legal right to use the Sandy's Way Lot) for guests of the Project. Once the Project is completed, the Applicant presumably can and will monitor and patrol the use of its own lot to ensure that it is used for patrons of the hotel, particularly in the summer. The Planning Board views the formal allocation of 21 parking spaces from Sandy's Way Lot as having the positive effect of making clear that such spaces are now formally allocated. The owner of the Project can control the use of the Sandy's Way lot, including any use by the public for Opera House Events, Planning Board meetings, or the like.

14. Thus, the Planning Board finds that there are approximately 58 spaces available in Sandy's Way Lot and that there are sufficient spaces for the Applicant to allocate 21 spaces to the proposed use for the Project by the Applicant. The Planning Board finds that potential use by the general public of the Sandy's Way Lot does not warrant a different determination because there are additional spaces available at the Sandy's Way Lot and the Applicant can be expected to manage the 21 spaces allocated for the Project. Because any use by the general public may be deemed by general license or permission, the Planning Board finds that no spaces from the Sandy's Way Lot have been "allocated" to the general public or surrounding businesses apart from the Applicant.

### **III. Conclusions of Law**

Based upon the application materials, testimony, statements, evidence, documents and other materials in the record existing prior to remand, and as outlined and reflected in the above Findings of Fact, the Rockport Planning Board finds that the Project meets the architectural harmony and parking requirements in the Rockport Land Use Ordinance, and further makes the following conclusions based on the applicable provisions of the Ordinance:

#### **A. Architectural Review Standards, Section 1003.**

##### ***General***

- 1. Proposed development shall be located and configured in a visually harmonious manner with the terrain and vegetation of the parcel and surrounding parcels. Structures shall impede as little as reasonably practical, scenic views from the main road or from existing structures and nearby undeveloped areas.*

Based on the evidence in the record and in the findings of fact as outlined above, the Board found that the Application meets this standard and the Project will be visually harmonious with the terrain and surrounding parcels. The design is well crafted, has a nice appearance, and blends in with the architectural features of adjacent buildings. Further, the prevalence of balconies in the surrounding area makes the addition of balconies to the hotel more architecturally harmonious with its surroundings. The



balconies on the façade of the building are attractive and unobtrusive and blend in well with the adjoining buildings, and are similar to balconies located in the vicinity of the Project, including a balcony located at 23 Central Street that is located across the street from the Project. While assessment of design contains subjective elements, and various architects potentially could come to different conclusions, the collective judgment of the Planning Board is that the Project meets the standards for architectural harmony as outlined above. A search of the Land Use Ordinance finds no reference to the governance of balconies.

*2. The architectural design of structures and their materials and colors shall be visually harmonious with the overall appearance of neighboring structures.*

The Planning Board concludes that the Project meets the standard set forth above. The proposed hotel flows along with the street, is made out of bricks and granite that matches and complements the materials of the adjacent buildings, including granite, historic red brick, mansard roof, paneled veneer, granite foundations, paned windows, and a slate mansard roof. The proposed design of the hotel picks up and plays upon the design features of the adjacent buildings in a pleasing and harmonious way, and imposes upon the existing buildings as little as reasonably practical.

*3. Buildings that do not conform with these standards and that are stylized to the point where the structure is a form of advertising or exhibits a franchise style are not permitted.*

The Planning Board concludes this provision is not applicable to the Project and/or has not been remanded for further consideration.

*4. For properties with more than one building, there shall be an overall design concept that demonstrates a cohesive relationship between the buildings.*

The Planning Board concludes this provision is not applicable to the Project and/or has not been remanded for further consideration.

*5. Accessory structures shall be treated as architectural elements and shall meet the same design standards as larger buildings.*

The Planning Board concludes this provision is not applicable to the Project and/or has not been remanded for further consideration.

*6. Where drive-throughs are permitted, they shall be incorporated into the design of the building through their scale, color, detailing, massing and other architectural treatments. Drive-through elements shall not face the street, unless for safety or security reasons there is no alternative.*

The Planning Board concludes this provision is not applicable to the Project and/or has not been remanded for further consideration.

**Renovations and Additions**

The Planning Board concludes this provision is not applicable to the Project and/or has not been remanded for further consideration.

**Roofs**



*Long monotonous facade designs including, but not limited to, those characterized by unrelieved repetition of shape or form or by an unbroken extension of line shall be avoided. Rooflines should be designed to provide diversity and visual interest.*

The Project meets this standard as the façade is visually appealing and is not long and monotonous, but instead includes design elements that are visually harmonious with the adjacent buildings. The proposed roof is a mansard roof, providing both visual interest and diversity with the surrounding buildings while also providing consistency through the use of slate roofing.

*1. Pitched roofs or the appearance of pitched roofs with a minimum slope of four (4) to twelve (12) are strongly encouraged.*

The Planning Board concludes this provision is not applicable to the Project and/or has not been remanded for further consideration.

*2. Flat and Mansard Roofs. The use of flat and mansard roofs is prohibited on the façade(s) visible from the street, except for buildings three stories and higher located in the Section 913 Downtown zoning district.*

The Planning Board concludes that this standard has been met. The hotel will have a mansard roof, which is allowed since the project is three stories or higher and located in the 913 Downtown Zoning District.

*3. Preferred Materials. Preferred materials for visible roofing include composite shingles, standing-seam, non-glare metal or natural materials.*

The Planning Board concludes that this standard has been met. The roofing materials are natural slate, and hence the Project complies with this standard.

*4. Colors. Roof stripes and roof advertising shall be prohibited.*

The Planning Board concludes that this standard has been met. The coloring of the roof is consistent with adjacent roofs, slate.

*5. Roof-mounted Equipment. Mechanical equipment mounted on rooftops shall be screened.*

The Planning Board concludes that this standard has been met. The plans in the record show that mechanical equipment is shielded with panels and is not visible from Central Street or adjacent ways.

### ***Building Materials***

*Building materials should be treated as significant design elements that define the appearance of the structure. Where possible, sustainable, long-wearing recyclable products should be utilized.*

*1. Siding. The use of traditional building materials common to northern New England, including natural wood siding, brick or other materials with similar texture and appearance are recommended. Contemporary materials that have the same visual characteristics as traditional materials are acceptable.*



The Planning Board concludes that this standard has been met. The proposed hotel will use traditional materials, primarily brick and slate on the roof. The brick columns and archways define the appearance of the structure, and visually draw attention to the lines of the building. Buildings built with these materials are meant to be built for posterity – including this new building as well as the adjacent buildings.

**2. Exterior Finish. Plain, unfinished, concrete block; T-111 and plywood shall be prohibited.**

The Planning Board concludes this provision is not applicable to the Project and/or has not been remanded for further consideration. The proposed building does not use concrete block, T-111 or plywood on the exterior finish.

**3. Colors. Bright, garish colors shall be prohibited.**

The Planning Board concludes that this standard has been met. The proposed building uses brick and granite and does not include any bright or garish colors.

**Awnings and Canopies**

The Planning Board concludes this provision is not applicable to the Project and/or has not been remanded for further consideration. The overhang over the front of the building is not an awning or canopy.

**Linear Commercial Structures**

The Planning Board concludes this provision is not applicable to the Project and/or has not been remanded for further consideration.

**B. Architectural Review, Site Plan Review Section 1301**

***Section 1301 – Purpose.***

*Substantial development or major changes in the uses of land may cause a material impact on the cost and efficiency of municipal services, public utilities, road systems and traffic congestion, and may affect the visual characteristics of neighborhoods and the Town, and the general health, safety and welfare of the community. The purpose of this Section to minimize the potential negative impacts of development, while maximizing development's positive effects by assessing the impact of new development on surrounding properties, municipal facilities and services, and the natural environment.*

*Only uses that have been recognized as being permitted uses in their zoning district, or as the result of successful review as a conditional use, are permitted to proceed to site plan review. Therefore, the purpose of site plan review is not to establish the right of a use to be located in the area proposed, but rather to ensure that the way the use is designed and placed on a lot is appropriate to its surroundings.*

*The Planning Board may consider the historic importance, scenic beauty or irreplaceability of natural areas during the site plan review. This may require a proposed development or structure to relate harmoniously to the terrain and surrounding environment, including existing buildings in the vicinity that have a visual relationship, with the proposal being considered.*



Based on the above findings and conclusions of law, the proposed hotel meets the site plan review purpose statement. The proposed building is visually harmonious, has a visual relationship with, and augments and complements the adjacent buildings – and completes the visual harmony of the block in that it fits within the surrounding structures. The balconies on the proposed building are consistent with the other balconies in the vicinity, including on the new red brick public library, the building located at 23 Central Street owned by Appellant John Priestley, and on buildings to the right and left of the building and buildings to the rear overlooking the harbor. The balconies on the proposed building have a visually harmonious relationship with their surroundings, as there is continuity in the buildings adjoined to the proposed hotel and the balconies resemble those on adjacent properties, including those referenced above. In sum, the Planning Board concludes that the Project looks like it fits in to its surroundings, harmoniously belongs with the adjacent buildings, and incorporates design elements from the surrounding structures, including the use of brick, granite, and arches. The proposed building is visually appealing and relates harmoniously with the historic standards and features of the adjacent buildings.

#### **C. Adequacy of Off-Street Parking – Section 803.1(4)**

4. *Parking Space table, subject to subsections 5, 6, 7, or 8 below. The following table specifies the minimum number of parking spaces to be provided (relevant uses outlined below):*

|                                      |   |
|--------------------------------------|---|
| <i>Motels, Hotels and Inns</i>       | <i>2 parking spaces plus 1 parking space for each sleeping room</i> |
| <i>Restaurants &amp; Night Clubs</i> | <i>1 space for each 3 seats</i>                                     |

Based on the evidence in the record and in the findings of fact as outlined above, the Board found that the Project requires 56 parking spaces, satisfied by providing 21 on-site parking spaces in the Sandy's Way Lot behind the proposed hotel, and 35 off-site parking spaces served by valet service to be located at the Hoboken Lot at 310 Commercial Street as previously approved by the Zoning Board of Appeals.

Based on the foregoing items and only upon the record existing prior to remand by the Maine Superior Court, the Planning Board enters its Findings of Fact and Conclusions of Law in support of its approval of 20 Central's application for Site Plan Review as reflected in its prior Decision, which its incorporated herein by reference.

#### **IV. Additional Submissions**

As noted above, following remand by the Superior Court to the Planning Board to address parking requirements and architectural harmony standards, both the Applicant and the Appellants, as well as



members of the public, prior to the January 27, 2022 meeting submitted additional materials and information for the Board's consideration on remand.

While these new materials were accepted and reviewed by the Board, the Planning Board hastens to note that these materials and any pictures taken during site walk were not relied upon for the foregoing Findings of Fact and Conclusions of Law outlined in Sections II and III above which instead were based on the evidence that was in the record during the Board's approval in 2020.

Counsel for Appellants prior to and at the public meeting held on January 27, 2022 objected to the Planning Board's consideration of any additional submissions or evidence despite that fact that counsel for Appellants and Appellant John Priestly both submitted additional information to the Planning Board prior to the January 27, 2022. Based upon such objections, the Planning Board took special care to enter Findings of Fact and Conclusions of Law based solely on the record that existed prior to remand by the Superior Court and also bifurcated discussion at the public meeting held on January 27, 2022 to first address these matters based solely on the pre-remand record and then to later allow for discussion based on newer submissions. To the extent that the Court's Orders can be construed as permitting the Planning Board to receive and consider new evidence on remand, the Planning Board would find and conclude that the Applicant met parking requirements and architectural harmony standards on remand for the reasons noted above and based on additional submissions and materials received after remand.

The Board was prepared to rely upon certain additional submissions which it found to be persuasive and notes the following:

1. Letters from a number of professional architects were informative, particularly opinions that newer or modern buildings that are to be built within an existing neighborhood should not strictly replicate existing buildings, but should instead reflect the 'time of the building'. The letters of professional architects and experts submitted by 20 Central were unanimous in their admiration of the efforts of the proposed hotel to fit harmoniously into the neighborhood. The Board found the architects all had credentials, experience, and were local to or familiar with the community.
2. Appellants submitted a Google Map graphic with embedded pictures that purported to depict the number of decks located in the vicinity of the Project. The Planning Board did not find this depiction credible because it did not capture the numerous balconies that it observed on its very first Site Walk for the Project (including one located across the street from the Project, at 23 Central Street). While Appellants' submissions show decks and balconies located in the neighborhood, the Board did not place significant weight on the Appellants' depiction for the reason noted above and because it showed the back of the buildings having no protruding structures, despite the fact that there is a large deck on the back of the Shepherd Block, a large balcony behind 24 Central, and decks on the condominiums in 24 Central.
3. Numerous letters submitted by the members of the public who have lived in Town of Rockport and have been active for many years spoke favorably concerning the architectural harmony of the building and how it blends into the surrounding buildings.
4. In contrast, the Applicant submitted extensive materials that purported to capture the number of decks and balconies in the region surrounding the Project. Although the



materials and slide from the Applicant related to architectural harmony showing a 500' radius was broader than the Order from the Court which asked whether decks "fall within the field of vision of a person standing on Central Street, or how the proposed bank of balconies might blend in with, complement, or clash with buildings adjacent to 20 Central Street," these submissions substantiated and supported the Planning Board's determination that a significant number of properties within eyesight of the proposed hotel have balconies or decks, including properties located directly across the street.

5. The Planning Board also notes that some of the materials in the additional submissions of the parties were included in the prior 2019/2020 review and were already part of the record.



## V. Decision

Based on the above findings of fact and conclusions of law outlined in Sections II and III of this Decision, the Town of Rockport Planning Board by a vote of 4-0-0 approves and adopts these written Findings of Fact and Conclusions of Law on remand from the Knox County Superior Court and affirms the approval of the Site Plan Application from 20 Central, LLC, subject to the previous findings and conditions included in the Board's May 21, 2020 Notice of Decision, which is attached hereto and made a part hereof.

Dated February 7, 2022

ROCKPORT PLANNING BOARD

BY: 

Joe Sternowski, Chair

File Name: Final FoF 20 Central 02\_07\_2022A